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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. SARAH REBECCA MORALES, Defendant and Appellant.	B214424 (Los Angeles County Super. Ct. No. KA083185)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mike Camacho, Judge. Affirmed.

Maier Shoch, Eric R. Maier and Louis E. Shoch for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Jason Tran and David Zarmi, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Sarah Rebecca Morales appeals from a judgment entered after a jury found her guilty of count 1, unlawful driving or taking of a vehicle, a maroon pickup truck (Veh. Code, § 10851, subd. (a)); count 2, assault on a peace officer (Pen. Code, § 245, subd. (c));[1] count 3, assault on a peace officer (§ 245, subd. (c)); count 4, assault on a peace officer (§ 245, subd. (c)); count 6, willfully evading a peace officer (Veh. Code, § 2800.2, subd. (a)); count 7, resisting an executive officer (§ 69); and count 8, unlawful driving or taking of a vehicle, a white Honda (Veh. Code, § 10851, subd. (a)).[2]

The trial court sentenced appellant to eight years and four months in state prison consisting of the following: count 2, the upper term of five years; count 1, eight months (one-third the midterm of two years); count 3, four months (one-third the midterm of one year); and count 4, four months (one-third the midterm of one year). Appellant was also sentenced to the midterm of two years each for count 6, count 7, and count 8, to run concurrently.

Appellant contends that: (1) the trial court erroneously instructed the jury that it could convict her of a crime committed by co-perpetrator Glenn Patrick Rose if the crime was the natural and probable consequence of a different crime that appellant committed; and (2) the trial court erroneously instructed the jury that appellant could be guilty of Rose's assaults with the maroon truck if appellant aided and abetted Rose's efforts to evade police in a different vehicle earlier that evening.

We affirm.

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1 All further statutory references are to the Penal Code unless otherwise indicated.

2 Appellant was found not guilty of count 5, unlawful driving or taking of a vehicle, the black pickup truck (Veh. Code, § 10851, subd. (a)).

FACTS AND PROCEDURAL HISTORY

On May 12, 2008, appellant's boyfriend Rose picked her up in Baldwin Park in a maroon pickup truck that he had stolen earlier in the evening.[3] Rose drove to an alley behind an apartment complex in Covina, where he parked the truck. He disappeared around the corner and reappeared a few minutes later in a black pickup truck that he apparently stole while he was around the corner. Appellant got into the black pickup truck and Rose drove it to the home of their former roommates in Pomona. The roommates were not home, so Rose and appellant drove to the City of Walnut, where Rose saw a white Honda that he wanted to steal. Appellant remained in the black pickup truck while Rose started the white Honda. Appellant followed Rose in the black pickup truck to another location where she moved her belongings from the truck into the white Honda. She then got into the white Honda and Rose drove it away.

At 2:00 a.m. on May 13, 2008, Los Angeles County Sheriff's Department Deputy Jesus Mojarro received a report of a stolen Honda. He saw the car in Walnut and began pursuing it. Los Angeles County Sheriff's Department Deputy Steven Winter also received the report of the stolen Honda. Deputy Winter saw the white Honda with Deputy Mojarro in pursuit. Los Angeles County Sheriff's Department Deputy Calvin Mah joined in the pursuit. Deputy Mojarro and Deputy Mah activated their lights and sirens and the white Honda made a U-turn and accelerated in the opposite direction. Deputy Winter then activated his lights and sirens. A sheriff's department helicopter joined in the pursuit.

When Rose spotted the helicopter, he decided to drive toward the airport to hinder the helicopter. He asked appellant for directions to the airport. She told him Los Angeles International Airport was west and Ontario Airport was east. She said "go left for Ontario." Rose drove toward the 60 freeway. As he crossed over the bridge above the freeway, Rose swerved around a tractor-trailer and struck a road median, causing severe

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[3] An audio recording of an interview of appellant by police was played for the jury. The jury also viewed a transcript of the interview.

tire damage to the white Honda. With the deputies and the helicopter in pursuit, Rose drove onto the 57 freeway north and turned back west onto Interstate 10. California Highway Patrol Officers Cory Shultz and his partner Maurice Smith joined the pursuit on Interstate 10, activating their lights and sirens.

Rose exited the freeway, heading north on Barranca Avenue in Covina at a high rate of speed while the white Honda's right rim sparked continuously. He turned into the alley where the maroon pickup truck he had stolen earlier was parked. Rose told appellant not to let the officers touch her. They said "I love you" to each other. Appellant and Rose got out of the white Honda and ran to the maroon pickup truck. Deputies Mah and Winter and Officers Shultz and Smith stopped and exited their cars. Deputy Mojarro had been ordered to stop his pursuit of appellant and Rose. Officer Smith chased Rose to the driver's side of the maroon pickup truck and Officer Shultz chased appellant to the passenger side. Deputy Winter ran to assist Officer Smith. Deputy Mah went to the aid of Officer Shultz. Appellant resisted their attempts to remove her from the maroon pickup truck. Officer Shultz grabbed appellant's foot, but she held onto the edge of the door jamb and repeatedly kicked him in the chest while screaming. Appellant did not obey Deputy Mah's orders to stop kicking. Deputy Mah hit appellant's legs with his flashlight, but it had no effect on her.

Meanwhile, Rose got into the truck, disobeying Officer Smith's orders to stop. He also disobeyed Officer Winter's orders to stop fighting and get out of the truck. Rose tried to start the truck and Deputy Winter struck his hand with a flashlight. Rose thrust back with his free hand. Officer Smith tasered Rose, who screamed for two seconds, then fought back and continued to try to start the truck.

Officer Shultz did not want to pull appellant from the truck by her legs fearing her face would hit the concrete. Instead, he let go of her to grab his taser. Appellant was then able to close the door and Rose started the truck and drove off. Rose was angry that the officers had pulled appellant and shouted "You fucking touch my girlfriend." Rose turned right and sideswiped the CHP patrol car, pushing it ahead a car length. He then

reversed and drove toward Deputy Winter who had to jump out of the way of the car. He drove forward and collided with Deputy Winter's car, lifting it up and into Deputy Mah's car. Officer Shultz fired his handgun at the pickup truck, believing that other deputies might still be in the cars. Rose then drove in reverse toward Deputies Winter and Mah. Deputy Winter fired two shots, striking Rose with one bullet. Appellant got Rose to "try to go again, around" the officers. The truck collided with the CHP patrol car and changed direction to head towards Officer Shultz and Deputy Mah who were seeking cover behind a parked car. Officer Shultz and Deputy Mah fired several shots at the truck. The pickup truck hit the car sheltering Officer Smith and Deputy Mah who were knocked down by the car as it was pushed five feet into them and into a nearby pole. Deputy Mah and Officer Shultz stood up and fired at Rose. Officer Shultz and Deputy Mah pointed their guns at Rose. Deputy Mah ordered both appellant and Rose to raise their hands. Both complied. The officers detained appellant and Rose. Rose died at the scene from a gunshot wound to the chest.

At trial, the People requested CALCRIM No. 402, stating that it was relying on the theory that appellant aided and abetted Rose in both a Vehicle Code section 2800.2 violation by giving him directions to the airport and a section 69 violation by deterring other law enforcement officers from extracting Rose from the vehicle. The trial court agreed with defense counsel that in order for the natural and probable consequences doctrine to apply, appellant must be found guilty of aiding and abetting Rose's uncharged section 69 or Vehicle Code section 2800.2 offense.

The trial court instructed the jury with a modified version of CALCRIM No. 402. After the jury returned its verdict, defense counsel made a motion for new trial based on lack of evidence, arguing that the discussion between Rose and appellant about the direction of the airport was insufficient evidence to support her conviction for aiding and abetting Rose's evasion and that there was no evidence that the jury found appellant guilty as an aider and abettor of Rose in his uncharged section 69 violation, rather than as a direct perpetrator of a section 69 violation. The motion for new trial was denied.

DISCUSSION

The trial court properly instructed on the natural and probable consequences theory of liability for the assaults.

A. The natural and probable consequences doctrine

Appellant contends that the trial court erred in instructing on the natural and probable consequences doctrine because: (1) she was the direct perpetrator rather than an aider and abettor of the target crime embodied in count 7, resisting arrest in violation of section 69; and (2) a close connection between the target offense and the charged offense did not exist between the Vehicle Code section 2800.2 violation and the three counts of assault with a deadly weapon.

The trial court must instruct on all material issues supported by substantial evidence. (*People v. Breverman* (1998) 19 Cal.4th 142, 154, 160.) "[A]n aider and abettor is a person who, 'acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime.' [Citation.]" (*People v. Prettyman* (1996) 14 Cal.4th 248, 259 (*Prettyman*).)

"To convict a defendant of a nontarget crime as an accomplice under the 'natural and probable consequences' doctrine, the jury must find that, with knowledge of the perpetrator's unlawful purpose, and with the intent of committing, encouraging, or facilitating the commission of the target crime, the defendant aided, promoted, encouraged, or instigated the commission of the target crime. The jury must also find that the defendant's confederate committed an offense other than the target crime, and that the nontarget offense perpetrated by the confederate was a 'natural and probable consequence' of the target crime that the defendant assisted or encouraged." (*Prettyman, supra,* 14 Cal.4th at p. 254.) "To trigger application of the 'natural and probable consequences' doctrine, there must be a close connection between the target crime aided and abetted and the offense actually committed." (*Id*. at p. 269.) "[W]henever uncharged

target offenses form a part of the prosecution's theory of criminal liability and substantial evidence supports the theory, . . . an instruction identifying and describing potential target offenses is necessary to minimize the risk that the jury, . . . will 'indulge in unguided speculation' [citation] when it applies the law to the evidence adduced at trial." (*Id*. at pp. 266-267.) "[T]o convict a defendant of a crime under this doctrine, the jury need not unanimously agree on the particular target crime the defendant aided and abetted." (*Id*. at pp. 267-268.)

B. The trial court did not err in instructing on the natural and probable consequences doctrine because the evidence showed that appellant aided and abetted Rose in violation of section 69

The trial court instructed the jury with CALCRIM No. 402[4] that appellant was charged in count 6 with evading a peace officer and in count 7 with resisting an executive

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[4] CALCRIM No. 402, as given, stated: "The defendant is charged in Count 6 with evading a peace officer in violation of Vehicle Code section 2800.2, and in Count 7 with resisting an executive officer in violation of Penal Code section 69. [¶] The defendant is also charged in Counts 2, 3 and 4 with assault with a deadly weapon on a peace officer or by force likely to produce great bodily injury or death in violation of Penal Code section 245(c). [¶] You must first decide whether the defendant is guilty of either evading a peace officer or resisting an executive officer or both. If you find the defendant is guilty of either one or both of these crimes, you must then decide whether she is guilty of assault with a deadly weapon on a peace officer or by force likely to produce great bodily injury or death. [¶] Under certain circumstances, a person who is guilty of one crime may also be guilty of other crimes that were committed at the same time. [¶] To prove that the defendant is guilty of assault with a deadly weapon on a peace officer or by force likely to produce great bodily injury or death, the People must prove that: [¶] 1. The defendant is guilty of either evading a peace officer or resisting an executive officer or both; [¶] 2. During the commission of either evading a peace officer or resisting an executive officer or both, a co-participant in either one or both those crimes committed the crime of assault with a deadly weapon on a peace officer or by force likely to produce great bodily injury or death; AND [¶] 3. Under all of the circumstances, a reasonable person in the defendant's position would have known that the commission of assault with a deadly weapon on a peace officer or by force likely to produce great bodily injury or death was a natural and probable consequence of the commission of either evading a peace officer or resisting an executive officer or both. [¶] A *co-participant* in a crime is the perpetrator or anyone who aided and abetted the

officer, and in counts 2, 3, and 4 with assault with a deadly weapon on a peace officer. The jury was instructed in CALCRIM No. 402 that if it found appellant guilty of either one or both of these crimes, the jury must then decide if she was guilty of assault with a deadly weapon. The jury was further instructed in CALCRIM No. 402 that to prove that defendant was guilty of assault with a deadly weapon on a peace officer the People must prove that: (1) appellant was guilty of either evading a peace officer or resisting an executive officer or both; (2) *during the commission of either evading a peace officer or resisting an executive officer or both, a co-participant in either one or both those crimes* committed the crime of assault with a deadly weapon on a peace officer or by force likely to produce great bodily injury or death; and (3) that a reasonable person would have known that the assault with a deadly weapon was a natural and probable consequence of evading a peace officer or resisting arrest or both. A co-participant was defined in CALCRIM No. 402 as *"the perpetrator or anyone who aided and abetted the perpetrator*." (Italics added.)

Appellant contends that the jury could have convicted her only as a direct perpetrator rather than an aider and abettor of a violation of section 69 because "there was no evidence and no argument that anybody else committed this offense and because there was no evidence and no argument that [appellant] aided and abetted anybody else to

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perpetrator. It does not include a victim or innocent bystander. [¶] A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence. If the assault with a deadly weapon on a peace officer or by force likely to produce great bodily injury or death was committed for a reason independent of the common plan to commit either evading a peace officer or resisting an executive officer or both, then the commission of assault with a deadly weapon on a peace officer or by force likely to produce great bodily injury or death was not a natural and probable consequence of either evading a peace officer or resisting an executive officer or both. [¶] To decide whether crime of assault with a deadly weapon on a peace officer or by force likely to produce great bodily injury or death was committed, please refer to the separate instructions that I will give you on those crimes."

do so." She also claims that the instructions limited the jury to finding appellant guilty only as a direct perpetrator, rather than as an aider and abettor.

We disagree. In discussing whether CALCRIM No. 402 should be given, the People argued that appellant was personally responsible both as a direct perpetrator of and as an aider and abettor to Rose's violation of section 69. In making its argument to the trial court, the People pointed to Rose's statements, "don't let them touch you, baby . . . follow me in that truck," as evidence that appellant aided Rose by deterring other law enforcement officers from extracting Rose from the vehicle.

Furthermore, during closing arguments, the People argued that "We're still in phase two of the joint venture, trying to get away. There is another method they use to try to get away; that is resisting an executive officer." With reference to appellant's actions as an aider and abettor to the assaults, the People urged, "She was helping aid that escape all the way up until that point by the evading, helping with the evading, aiding and abetting, the resisting. She's also helping someone else, her boyfriend, elude capture." The People then addressed the natural and probable consequences doctrine by defining it and describing the evading, the resistance, and the assault as a natural progression. The People argued that appellant was "legally responsible under both aiding and abetting and natural and probable consequences." Thus, the tenor of the People's closing argument shows that the People's theory was based on appellant's actions in aiding and abetting both the evading and resisting.

In addition, the evidence supports the jury's finding that appellant aided and abetted Rose in a violation of section 69. In her interview, which was introduced into evidence, appellant stated that Rose told her "to get out" of the white Honda, and "don't let them touch you." She said that he told her to follow him into the maroon truck. The evidence also showed that Rose disobeyed orders to stop, got into the maroon truck, struck Deputy Winter with his free hand when Deputy Winter hit him in the arm with a flashlight, and despite being tasered, continued to start the maroon truck. Appellant stated that she held onto the truck, did not comply with the officers' orders to get out of

the truck, and fought as hard as she could to stay in the truck. She said that Rose became angry that the officers pulled on her, and rammed the police car. Appellant stated that "I just wanted him to get out" and that she "got him to try to go again, around him." Based on the foregoing, the jury could conclude that once out of the white Honda, the two helped each other resist arrest by running to the maroon truck and fighting off efforts of the police to extract them from the vehicle.

Under CALCRIM No. 402 as given, the jury was instructed it could find that appellant aided and abetted Rose in his actions of resisting an executive officer. The jury was instructed that the People had to prove that "*during the commission of either evading a peace officer or resisting an executive officer or both, a co-participant in either or both crimes* committed the crime of assault with a deadly weapon on a peace officer or by force likely to produce great bodily injury or death." (Italics added.)

It is undisputed that Rose committed the crime of assault with a deadly weapon. Under the jury instruction, the People had to prove that Rose, the co-participant who committed the assault, was a co-participant in either or both crimes of evading a peace officer or resisting an executive officer. Pursuant to the jury instruction, as a co-participant, Rose could be *"the perpetrator or anyone who aided and abetted the perpetrator*." (Italics added.) Accordingly, the jury was instructed that it could find Rose to be the perpetrator of evading a peace officer or resisting an executive officer, and that appellant was his aider and abettor. It was not limited to finding appellant guilty of the target crime of resisting an executive officer, as appellant argues.

We conclude that the trial court did not err in instructing on the natural and probable consequences doctrine with respect to the section 69 violation.

C. The trial court did not err in instructing on the natural and probable consequences doctrine because the evidence showed that appellant aided and abetted Rose in his violation of Vehicle Code section 2800.2

Appellant contends that the only evidence that she aided and abetted Rose in evading the officers was the direction she gave to Rose to go east or left to the airport,

and this was not closely connected to the violation of Vehicle Code section 2800.2 and the assaults with a deadly weapon in a different vehicle. We disagree.

Citing *People v. Leon* (2008) 161 Cal.App.4th 149 (*Leon*), appellant contends that the requisite close connection between the directions given by appellant in the white Honda and the assault on the police officers with the maroon pickup truck did not exist. *Leon* does not assist her argument. In that case, the defendant aided and abetted the codefendant in vehicular burglaries. When, in the midst of a burglary, they were confronted by a victim who shouted that he was going to call the police, the codefendant looked at the victim and fired a gun in the air. The court noted that unlike situations where a defendant assisted a confederate to commit an assault with a deadly weapon with the result that the confederate not only assaulted, but murdered the victim, in *Leon* there was not a close connection between the target crimes of vehicle burglary or illegal possession of a weapon to the nontarget crime of witness intimidation. (*Id*. at p. 161.)

We consider whether an offense is a natural and probable consequence of a target offense "'in light of all of the circumstances surrounding the incident.'" (*Leon*, *supra*, 161 Cal.App.4th at p. 158.) The evidence showed that the assistance appellant rendered to Rose in evading the police naturally and probably resulted in him using the final vehicle as a weapon to assault the officers during their escape attempt. Appellant and Rose were pursued in the white Honda by the officers, who had their lights and sirens on. At one point, Rose asked appellant for directions to the airport. She told him to go east, or left to Ontario airport. After Rose told appellant not to let the officers touch her, and to follow him to the maroon truck, they abandoned the white Honda and got into the maroon truck. Rose used the car like a battering ram, and at one point, appellant told Rose to try to go around the officers again. It was a natural, probable, and foreseeable consequence that Rose would then commit the assaults on the officers by trying to hit them with the truck. We find unavailing appellant's argument that the events intervening between the time when appellant gave Rose the directions and the assaults on the officers rendered the assaults an unforeseeable consequence.

Contrary to appellant's argument that the People focused only on the directions given by appellant in its closing argument, the record shows that the People argued that appellant aided and abetted Rose in the evading because she had participated in the auto thefts that evening; she knew Rose had evaded police in other incidents; she declared her love and willingness to do anything for Rose; she stated she knew Rose's mindset; both appellant and Rose knew the helicopter was coming; she gave directions to Ontario airport by telling Rose to go left, or east; and she fled with Rose from the white Honda, extending the pursuit to the maroon pickup truck. The People argued that there was one continuous transaction: auto theft, evading, resisting, and assault, and that appellant could be guilty of the assaults under both the natural and probable consequences theory or straight aiding and abetting the assault.

Appellant also argues that because the officers pursued the maroon pickup truck on foot rather than in a vehicle with flashing lights, the evasive conduct ended when appellant and Rose exited the white Honda. It is true that the elements of evading a peace officer include that the peace officer was pursuing the fleeing defendant in a vehicle with at least one lighted red lamp on in the police vehicle and sounding a siren as reasonably necessary. (Veh. Code, § 2800.2; CALCRIM No. 2181.[5]) But, we conclude that in light of all the circumstances, the assault on the officers using the car as a weapon was a natural and probable consequence of the target crime of evading the officers. Appellant

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5 CALCRIM No. 2181 provides as follows: "The defendant is charged in Count 6 with evading a peace officer with wanton disregard for safety in violation of Vehicle Code section 2800.2. [¶] To prove that the defendant is guilty of this crime, the People must prove that: [¶] 1. A peace officer driving a motor vehicle was pursuing the defendant; [¶] 2. The defendant, who was also driving a motor vehicle, willfully fled from, or tried to elude, the officer, intending to evade the officer; [¶] 3. During the pursuit, the defendant drove with willful or wanton disregard for the safety of persons or property; AND [¶] 4. All of the following were true: [¶] (a) There was at least one lighted red lamp visible from the front of the peace officer's vehicle; [¶] (b) The defendant either saw or reasonably should have seen the lamp; [¶] (c) The peace officer's vehicle was sounding a siren as reasonably necessary; [¶] (d) The peace officer's vehicle was distinctively marked; AND [¶] (e) The peace officer was wearing a distinctive uniform."

and Rose were cornered after a desperate high speed chase in the white Honda with police officers and a helicopter in pursuit. Rose had stolen and abandoned two vehicles before he stole the white Honda. It was foreseeable that Rose would use one of the abandoned vehicles to continue their escape after the white Honda became disabled. Moreover, in light of Rose's previous history of evading police, known to appellant, it was a natural and probable consequence that Rose would subsequently use the maroon pickup truck as a weapon to assault the police when cornered. We conclude that the conduct of appellant in assisting the continued evasion was closely connected to the assaults on the officers.

D. Harmless error

We also find that even if the trial court erred in giving CALCRIM No. 402, the error was harmless. "An instruction that omits or misdescribes an element of a charged offense violates the right to jury trial guaranteed by our federal Constitution, and the effect of this violation is measured against the harmless error test of [*Chapman v. California* (1967) 386 U.S. 18, 24.] [Citation.] Under that test, an appellate court may find the error harmless only if it determines beyond a reasonable doubt that the jury verdict would have been the same absent the error. [Citation.]" (*People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1165.)

First, if the natural and probable consequences doctrine did not apply to the section 69 violation, the evidence was sufficient under the Vehicle Code section 2800.2 violation, and the instruction was harmless error. Second, if the natural and probable consequences doctrine did not apply to the Vehicle Code section 2800.2 as well, the evidence supported the People's theory that appellant aided and abetted the assaults on the officers, and any instructional error was harmless. Appellant, however, claims that the People's theory that she aided and abetted the *three* assaults was based on appellant's statement that she encouraged Rose to continue driving after he had been shot in the maroon pickup truck, which occurred after the *first* assault on Deputy Winter. Thus, she claims, the evidence did not support a conviction as to all three assaults, but only two.

But as the People argued in closing, the evidence shows that appellant aided and abetted the three assaults on the officers by not only telling Rose to drive around the officers and giving him directions on how to get out of the alley, but also by evading, resisting, eluding capture and by encouraging Rose, telling him she loved him, before and after the first assault on Officer Winter. We are satisfied that the evidence supported a conviction as to all three assaults.

We conclude that the jury verdict would have been the same in the absence of CALCRIM No. 402. We also disagree with appellant's claim, briefly raised, that the trial court improperly denied her motion for new trial. (*People v. Davis* (1995) 10 Cal.4th 463, 524 [the determination of a motion for a new trial rests so completely within the court's discretion that its action will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears].) We conclude that the trial court did not abuse its discretion in denying the motion for new trial on the basis that the jury was properly instructed and the evidence was sufficient to find appellant liable as an aider and abettor of the assaults or as an aider of Rose's uncharged violation of section 69 and Vehicle Code section 2800.2 under the natural and probable consequences theory.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
DOI TODD

We concur:

_____, J.
ASHMANN-GERST

_____, J.
CHAVEZ